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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

DOUGLAS ARTHUR LEJK,

Defendant and Appellant.

C087920

(Super. Ct. Nos. 18CF02494,
18CF02675)

Appointed counsel for defendant Douglas Arthur Lejk filed an opening brief setting forth the facts of the case and asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) We affirm the judgment.

FACTS AND PROCEEDINGS

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 123-124.)

After receiving a report of a petty theft at a grocery store, a Chico police officer saw defendant driving a stolen truck in the area. A search of the vehicle revealed a handgun that had been stolen in an April 2018 burglary and 9.21 grams of heroin.

The People charged defendant with multiple felony firearm arm possession offenses (Pen. Code, §§ 29800, subd. (a)(1), 25400, subd. (a)(1), 25850, subd. (a)(1) -- further undesignated statutory references are to the Penal Code), vehicle offenses (Veh. Code, § 10851, subd. (a)), theft offenses (§ 496d, subd. (a)), misdemeanor theft (§ 484, subd. (a)), and drug paraphernalia possession (Health & Saf. Code, § 11364). The prosecution also alleged defendant had served two prior prison terms. (§ 667.5, subd. (b).)

Approximately one week later, while incarcerated on the above case, defendant and two other inmates beat another inmate, Michael B. Defendant hit Michael three times, rendering him unconscious. The inmates continued to hit Michael in the face, while he was unconscious. Defendant hit him approximately 12 times. Michael was transported to the Oroville Hospital in critical condition and received treatment for a fracture at the base of his skull, open fractures of his mandible and nasal bone, and a concussion. Defendant admitted he committed the offense at the direction of his gang.

The People charged defendant with felony assault by means likely to produce great bodily injury (§ 245, subd. (a)(4)) and also alleged defendant had personally inflicted great bodily injury on the victim (§ 12022.7, subd. (a)), had committed the offense for the benefit of a street gang (§ 186.22, subd. (b)(1)(C)), and had served two prior prison terms (§ 667, subd. (b)).

Defendant pleaded no contest to being a felon in possession of a firearm, driving a vehicle without the owner's consent, and assault by means likely to produce great bodily injury and admitted the enhancement allegation that he had personally inflicted great bodily injury. On the People's motion, the remaining counts and allegations were dismissed with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754.

The trial court sentenced defendant to the upper term of four years for the assault, plus three years for the personal infliction of great bodily injury enhancement, a consecutive term of eight months (one third the midterm) for being a felon in possession of a firearm, and a consecutive eight months (one third the midterm) for driving a vehicle without the owner's consent, for an aggregate term of eight years four months. The trial court ordered defendant to pay various fines and fees, including a \$300 restitution fine in each case. The trial court found no ability to pay the presentence investigation report or public defender fees. The trial court awarded defendant 129 days of presentence custody credits.

Defendant filed a timely notice of appeal but did not obtain a certificate of probable cause.

DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no such communication from defendant.

We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

BLEASE, Acting P. J.

DUARTE, J.